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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

WEH MAGIC VALLEY
HOLDINGS, LLC,
Plaintiff,

v.

EIH PARENT, LLC, and JAMES
CARKULIS, an individual,
Defendants.

Case No. 6:15-cv-00050-SEH

**DEFENDANTS' MOTION TO
DISMISS**

Defendants EIH Parent, LLC (“EIH”) and James Carkulis respectfully submit this Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 9(b). Defendants seek dismissal of Plaintiff’s counts II and III—Breach of Fiduciary Duty and Fraud—as well as dismissal of Carkulis as a Defendant.

Dismissal of Plaintiff’s breach of fiduciary duty claim is proper because Plaintiff’s complaint fails to plead any facts indicating the existence of a special relationship. Similarly, Plaintiff’s count of fraud fails to meet the pleading standard required of Fed. R. Civ. P. 9(b) and does not allege specific facts upon which fraud could be proven. Finally, Plaintiff has failed to plead any conduct of Carkulis acting outside the scope of his position as President of EIH warranting a claim against him as an individual. This Court should Dismiss Carkulis as a party to this lawsuit.

Defendants EIH and Carkulis respectfully request that the Court grant their Motion to Dismiss certain claims in Plaintiff’s Complaint for the reasons set forth in the accompanying Brief in Support.

Pursuant to Local Rule 7.1(c)(1), counsel for Plaintiff has been contacted and confirmed that Plaintiff opposes this Motion.

RESPECTFULLY SUBMITTED this 6th day of August, 2015.

By /s/ Tom W. Stonecipher

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2015, a true and correct copy of this document was served on the following person(s) by:

<u> 1,2,3 </u>	CM/ECF
<u> </u>	Hand Delivery
<u> </u>	Mail
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<u> </u>	Fax
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